

INSTITUTIONAL COMPLIANCE AGREEMENT

**BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND THE
NEW YORK CITY FIRE DEPARTMENT
EMERGENCY MEDICAL SERVICE**

I. PREAMBLE

The New York City Fire Department's Emergency Medical Service ("EMS") hereby agrees to enter into this Institutional Compliance Agreement (the "Agreement") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure adherence with the billing requirements of Medicare and all other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "federal health care programs") by EMS and its employees (hereinafter collectively referred to as "EMS"), as well as all third parties with whom EMS may choose to contract to act as billing agents for EMS. EMS renders ambulance transportation services in New York City and is a participant in the federal health care programs.

Prior to the execution of this Agreement, EMS voluntarily commenced the establishment of a compliance program (also known as the "New York City Fire Department Medicare Billing Compliance Program" or the "EMS Billing Compliance Program"), which provides for institutional integrity policies and procedures and which, as represented by EMS in this Agreement, would be aimed at ensuring that its participation in the Medicare and all other federal health care programs (which includes any requests for payments) is in conformity with the statutes, regulations and other directives applicable to those programs. Therefore, EMS hereby agrees to have in place, within one hundred twenty (120) days of the date of execution of this Agreement, the EMS Billing Compliance Program (a copy or summary of which is attached hereto as Attachment 1), which shall include, at a minimum, all the elements of this Agreement. EMS further agrees to implement this Agreement within the time frames, and for the term, set forth in this Agreement.

The City of New York and the City of New York Fire Department hereby agree that they will do nothing that will interfere with, or diminish, EMS's ability to discharge EMS's institutional integrity obligations under this Agreement. Accordingly, both the City of New York and the City of New York Fire Department will take all reasonable steps to promote EMS's compliance with the terms of this Agreement

II. TERM OF THE AGREEMENT

The period of the compliance obligations assumed by EMS under this Agreement shall be five (5) years from the date of execution of this Agreement, except where other periods are specified below.

III. INSTITUTIONAL INTEGRITY OBLIGATIONS

Pursuant to this Agreement, and for the duration of this Agreement, EMS will make the following institutional integrity obligations permanent features of its EMS Billing Compliance Program, which shall be established in accordance with the provisions below:

A. COMPLIANCE COMMITTEE AND COMPLIANCE OFFICER

Within sixty (60) days of the date of execution of this Agreement, the New York City Fire Commissioner shall confirm in writing and notify OIG in accordance with section VI of this Agreement of the following: (i) the creation of a Compliance Committee for EMS and the appointment of its members; (ii) the delegation of authority to the Compliance Committee for the purpose of establishing and implementing the integrity obligations incorporated into the EMS Billing Compliance Program; and (iii) the appointment of an individual to serve as EMS's Compliance Officer. The document from the Fire Commissioner shall specify the names of those individuals appointed and their positions within the organization or outside. The members of the Compliance Committee shall include the Medical Director, Fire Department General Counsel, Chief of EMS, Assistant Commissioner for Investigations and Trials, Director of Personnel, Assistant Commissioner for Finance, Compliance Officer, or appointed designees of such employees.

The Compliance Officer shall be responsible for the day-to-day compliance activities engaged in by EMS to further the integrity obligations assumed herein, as well as for any reporting obligations created under this Agreement. The Compliance Officer shall report directly to the Fire Commissioner. The Compliance Officer shall submit the Annual Reports (or more frequently, if circumstances require), which shall first be approved by the Fire Commissioner, to OIG in accordance with the provisions herein governing reports under this Agreement.

B. ANNUAL REVIEW AND AUDIT OF BILLING POLICIES, PROCEDURES AND PRACTICES

On an annual basis, the Compliance Officer of EMS or his or her designee (the "Annual Auditor") shall conduct a review and audit of the billing policies, procedures and practices of EMS to verify that EMS's submissions for reimbursement comply with all

applicable federal health care program statutes, regulations, program and carrier directives relating to medical necessity and diagnostic coding and to identify any and all instances where claims fail to meet these standards. The review and audit shall be aimed at ensuring that these programs are billed appropriately for services rendered. To the extent that other irregularities are uncovered in the course of the review, the Annual Auditor shall identify the nature and cost of the irregularity and shall take the necessary steps to end the irregularity and prevent recurrences. The accuracy of the methodology and audit results shall be reviewed either by the New York City Comptroller or an independent professional organization at the option of the Compliance Officer (the "Independent Auditor"), such as an accounting firm, a law firm or a consulting firm, with expertise in the reimbursement and billing requirements of federal health care programs. EMS will provide to the OIG the Annual Auditor's and the Independent Auditor's reports on their findings.

Specifically, EMS's annual review and audit pursuant to this Agreement shall be conducted in accordance with the following guidelines:

1. AUDIT APPROACH: The annual review and audit must consist of a review of either: (a) all of the claims for the relevant period; or (b) a statistically valid sample of the claims that can be projected to the population of claims submitted by EMS during the relevant period. This determination shall be based on the size of the population believed to be implicated, the variance of characteristics to be audited, the cost of the annual review and audit, the available resources, the estimated duration of the review, and other factors.
2. BASIC AUDIT INFORMATION: Regardless of which of these two approaches is used, EMS and its Annual Auditor must prepare and submit to OIG a preliminary work plan describing the proposed annual review and audit, which preliminary work plan shall include the following:
 - a. Audit Objective: A statement expressing clearly the objective intended to be achieved by the audit and the audit procedure or combination of procedures that will be applied to achieve the objective. Such objectives shall include: (i) assessing the accuracy of the procedural and billing codes used; (ii) assessing the medical necessity of the services claimed; (iii) identifying incorrect payments and determining the incorrect amounts; (iv) recommending corrective measures; and (v) reporting the findings to OIG and the entity that issued payment on the claims, as appropriate.
 - b. Audit Population: Identification of the audit population, which is the group about which information is needed (e.g., total number of claims submitted by EMS). Explain the methodology used to develop the

population and provide the basis for this determination.

- c. Sources of Data: A full description of the source of the information upon which the audit conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and any contractual obligations (e.g., agreements for personal, management or other services).
- d. Personnel Qualifications: The names and titles of those individuals involved in any aspect of the annual review and audit, including statisticians, accountants, auditors, consultants and medical reviewers, and a detailed description of their qualifications.

3. SAMPLE ELEMENTS: The preliminary work plan must also include a sampling plan describing the following:

- a. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest (e.g., a single claim form).
- b. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected (e.g., all single claim forms submitted by EMS during the relevant one-year period). Determine and document how the audit population differs from the sampling frame and what effect that will have on conclusions reached as a result of the audit.
- c. Sample Size: The size of the sample may be determined through the use of a probe sample. At a minimum, however, the full sample must be designed so that it is within no less than a ninety (90) percent level of confidence and a precision of twenty-five (25) percent. Accordingly, EMS will submit a description of the probe sample and/or the full sample. If a probe sample is used, it must contain at least thirty (30) sample units and cannot be used as part of the full sample.
- d. Random Numbers: Both the probe sample and the sample must be selected through random numbers. The source of the random numbers used must be shown in the sampling plans. OIG strongly recommends the use of its Office of Audit Services's ("OAS's") Statistical Sampling Software, also known as "RAT-STATS," which is currently available free of charge through the "Internet" at "www.hhs.gov/progorg/ratstat.html".

- e. Proposed Sample Design: The sample design to be used will be simple random sampling.
- f. Estimate of Review Time per Sample Item: Estimate the time needed to locate the sample items and the staff hours needed to review a sample item.
- g. Characteristics to Be Measured by the Sample: Identify in the sampling plan the characteristics that will be used for testing each sample item. For example, in a sample drawn to estimate the value of overpayments due to duplicate payments, the characteristics under considerations are the conditions that must exist for a sample item to be a duplicate. The amount of the duplicate payment is the measurement of the overpayment. The sampling plan must also propose decision rules for determining whether a sample item entirely meets the criterion for having characteristics or only partially meets the criterion.

Characteristics EMS shall be expected to measure include, but are not limited to: (i) the origin and destination of the transport; (ii) the date of service; (iii) the medical necessity of the transport; (iv) the accuracy of the procedural and billing code utilized; and (v) the amount paid.

- h. Missing Sample Items: The sampling plan must include a discussion of how missing sample items may be handled and the rationale.
 - i. Other Evidence: Although sample results should stand on their own in terms of validity, sample results may be combined with other evidence in arriving at specific audit conclusions. If appropriate, indicate what other substantiating or corroborating evidence will be developed.
 - j. Estimation Methodology: The methodology to be used will be attributes sampling. EMS will assist OIG in estimating the amount of monetary loss, if any, determined based on the attributes sampling methodology.
 - k. Reporting Results: The sampling plan must indicate how the results may be reported. Enough details must be provided to clearly indicate what estimates will be reported.
4. COMMENTS ON WORK PLAN: To ensure the integrity of the annual review and audit, OIG will work with EMS in the development of the sampling plan.
 5. CERTIFICATION: Upon completion of the annual review and audit, EMS must

submit to OIG a certification by an authorized representative on behalf of EMS that, to the best of the its knowledge, the annual review and audit report contains truthful information and is based on the entity's good faith effort to assist OIG in its verification of EMS's compliance with the obligations in this Agreement.

6. VERIFICATION AND VALIDATION: At its option, OIG may choose to carry out any necessary activities at any stage of the audit to verify that the process is undertaken correctly and ultimately to validate the audit. EMS must assist OIG in this task.
7. SUPPORTING DOCUMENTATION AND WORK PAPERS: To facilitate OIG's verification and validation processes, copies of all work papers from the audit and other evaluative or analytical documents, including any assessment of EMS's controls, must be made available to OIG upon request.

If any of these annual reviews and audits uncovers billing policies, procedures and/or practices that result in material billing deficiencies, EMS shall notify the entity in charge of processing the claim for reimbursement (such as a Medicare Part B carrier) within sixty (60) days of discovering the deficiency and take remedial steps within ninety (90) days (or such additional time as may be agreed to by the carrier or other payor) to correct the problem, including preventing the deficiency from recurring. For purposes of this Agreement, a "material billing deficiency" shall mean any isolated event or a series of occurrences that: (i) has a significant, adverse financial impact; (ii) significantly affects the veracity of the information upon which the claim is based, even if it does not have a financial impact; or (iii) would result or has resulted in EMS submitting an improper claim for reimbursement (including, but not limited to, a claim not in compliance with the False Claims Act (codified at 31 U.S.C. §§ 3729-3733) and the anti-kickback statute (codified at 42 U.S.C. § 1320a-7b); and which claim lacks conformity with the programs' reimbursement principles or other applicable statutes, and the regulations and written directives issued by the Health Care Financing Administration ("HCFA") and/or its agents, or any other agency charged with administering the affected health care program and/or its agents. Nothing in this Agreement shall preclude EMS from taking appropriate steps to challenge any statute, regulation, program, or carrier directive. 1*

Contemporaneous to EMS's notification to the entity in charge of processing the claim for reimbursement as provided above, if any annual reviews or audits reveals material billing deficiencies, EMS shall notify OIG of: (i) its findings concerning the material billing deficiency; (ii) EMS's actions to correct such material billing deficiency; and (iii) any further steps EMS plans to take to address such material billing deficiency and prevent it or any similar billing deficiencies from recurring.

While this reporting requirement includes occurrences having a "significant, adverse

financial impact,” nothing herein excuses EMS’s statutory obligation as a participant in the federal health care programs to make appropriate refunds and take appropriate steps to correct the problem and prevent a recurrence.

C. INTEGRITY POLICY

Within one hundred twenty (120) days of the date of execution of this Agreement, EMS shall: (i) develop and implement, except as otherwise provided with respect to training, a written policy, regarding its commitment to the preparation and submission of accurate billings consistent with the standards set forth in the federal health care programs’ regulations, procedures and guidelines or otherwise communicated by HCFA, its agents or any other agency engaged in the administration of the federal health care program and/or its agents; and (ii) provide notice of the development and implementation of such policy, as provided in section VI of this Agreement.

This policy shall be adopted by EMS and distributed to all EMS employees and independent contractors directly involved in billing matters. EMS shall post in a prominent place, accessible to all other employees, a notice which contains information as to how such employees may review this policy. EMS shall post in a prominent place accessible to each employee a notice detailing its commitment to comply with all applicable federal health care program statutes, regulations and directives. A copy of the policy and notice will be available, upon request, for review by OIG.

D. INFORMATION AND EDUCATION PROGRAM

Within one hundred twenty (120) days of the date of execution of this Agreement, EMS shall: (i) develop and institute an information and education program designed to ensure that each officer and employee of EMS is reasonably aware of all statutes, regulations and agency directives (including HCFA and its contractors, and other federal agencies charged with administering federal health care programs and their agents) relating to their individual functions within EMS, as well as the standards of business conduct that such individuals are expected to follow and the consequences, both to the individuals and to EMS, that will ensue from any violation of these requirements; and (ii) provide notice of the development and institution of the program pursuant to section VI of this Agreement. This program shall be maintained for the term of this Agreement.

Pursuant to this information and education program, within one hundred fifty (150) days of the date of execution of this Agreement, for employees directly involved in billing, and within one hundred eighty (180) days for all other EMS employees, each employee shall receive at least three (3) hours of initial training regarding the EMS Billing Compliance Program. A schedule and topic outline of the training shall be included in the first Annual Report submitted to OIG after the execution of this Agreement.

Thereafter, EMS shall conduct an annual training program for all EMS employees directly involved in billing and all other EMS employees will receive such training every three (3) years as part of their retraining requirements. Such training shall provide for no less than two (2) hours of formal training on an annual basis on the following: (i) the submission of accurate bills for services rendered to patients of the federal health care programs; (ii) the personal obligation of each individual to make reasonable efforts to ensure that the information provided by the individual (either orally or in writing) relating to the care or the services rendered to patients of the federal health care programs, or otherwise provided in support of a submission for reimbursement to these programs, is accurate; (iii) applicable federal health care program reimbursement rules and statutes; and (iv) the legal sanctions for the submission of false or inaccurate information, including, but not limited to, improper billings and provide examples of improper billing practices. Such training shall also be included in the formal orientation of new employees.

EMS shall certify that such training has been provided in its Annual Report to OIG, in accordance with sections V and VI below. Information concerning the format, dates, and a copy of the materials provided will be available, upon request, for review by OIG.

E. CONFIDENTIAL DISCLOSURE PROGRAM

Within one hundred twenty (120) days of the date of execution of this Agreement, EMS shall establish a confidential disclosure program enabling employees to disclose to an identified individual not in the disclosing employee's direct chain of command any practices or billing procedures relating to the federal health care programs that are believed by the employee to be inappropriate. EMS shall, as part of this disclosure program, require an internal review of any disclosure that is sufficiently specific so that it: (i) permits a determination of the appropriateness of the billing practice alleged to be involved; and (ii) reasonably permits corrective action to be taken and ensures that proper follow-up is conducted. In an effort to address every disclosure, however, EMS shall, in good faith, make a preliminary inquiry for every disclosure instance to ensure they have obtained all of the necessary information that is reasonably required to determine whether an internal review, in accordance with the language above, should be conducted. EMS shall develop an internal tracking system to record or log and follow up on all disclosures received. Upon establishing the program, EMS shall provide notice of its creation to OIG, in accordance with section VI of this Agreement.

EMS shall include in each Annual Report to OIG a summary of the communications (including the number of disclosures by employees and their dates) concerning billing practices reported as, and found to be, inappropriate under the confidential disclosure program, the results of any internal review and the follow-up on such disclosures. EMS hereby agrees to maintain such reports in a manner agreeable to OIG so that they will be

readily available to OIG for a minimum of six (6) years or one (1) year longer than the duration of this Agreement.

The confidential disclosure program shall, at a minimum, provide for one or more telephone lines to be maintained by EMS and made known and available to all officers, employees, relevant contractors and patients twenty-four hours-a-day, seven days-a-week for the purpose of making any disclosures regarding compliance with the EMS Billing Compliance Program, the obligations in this Agreement and EMS's overall compliance with federal and state standards. Notice of the availability of this telephone line shall be posted in ambulances, to the extent practicable.

EMS shall select the manner in which disclosures are received, processed and resolved. The disclosing individual's identity may be requested, but shall not be required. Anonymity shall not be discouraged.

F. DEALING WITH EXCLUDED OR CONVICTED PERSONS OR ENTITIES

Within one hundred twenty (120) days of the date of execution of this Agreement, EMS shall implement a written internal operating policy whereby it shall not knowingly employ (either as an employee or as an independent contractor) with or without pay, an individual or entity that is listed by a federal agency as excluded, suspended or otherwise ineligible for participation in federal programs to hold any position or render any services for which the individual's or entity's compensation or the services rendered by the individual or entity are paid in whole or in part, directly or indirectly by a federal health care program or otherwise with federal funds. In order to carry out the policy, EMS shall make a reasonable inquiry into the status of any potential employee or independent contractor. Such a reasonable inquiry shall be made during the hiring process and shall include, at a minimum, a review of OIG's Cumulative Sanctions Report and the General Services Administration's ("GSA's") List of Parties Excluded from Federal Procurement and Non-Procurement Programs. Among other places, these reports can be found on the "Internet" at "www.dhhs.gov/progorg/oig" and "www.arnet.gov/epls", respectively. The Compliance Officer will periodically review these reports in connection with EMS's obligations under this paragraph.

Additionally, in the event that EMS learns that an employee or contractor is listed by a federal agency as excluded, suspended or otherwise ineligible for participation in any federal health care program, EMS will report such finding to OIG and make reasonable efforts to remedy the situation in accordance with applicable federal law and contracting, civil service, collective bargaining requirements and other state law. EMS will remove from responsibility for, or involvement with, EMS's federal health care program business operations any employee or independent contractor who becomes suspended or is proposed for exclusion during the individual's employment or contract with EMS until

the resolution of such suspension or proposed exclusion. In addition, if any employee or independent contractor of EMS is charged with a criminal offense relating to its federal health care program business, EMS will remove that individual immediately from responsibility for, or involvement with, EMS's federal health care program affairs. If an employee or independent contractor is convicted or debarred, EMS shall remove that individual from any position for which the individual's salary or the services rendered by the individual are paid in whole or in part, directly or indirectly by the federal health care programs or otherwise with federal funds. EMS shall notify OIG of each such personnel action taken and the reasons therefore, within thirty (30) days of the action.

EMS shall not knowingly allow, or cause to be allowed, any person convicted in any local, state or federal court of any felony involving health care matters to hold the position of director, officer or manager of EMS, or any of its agents either through an employment agreement or an independent contract.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, contract or pursuant to this Agreement, OIG or its duly authorized representative(s) may, upon reasonable advance notice to the Compliance Officer, or if the Compliance Officer is not available, to a member of the Compliance Committee of EMS, examine EMS's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (i) EMS's compliance with the terms of this Agreement; and (ii) EMS's compliance with the requirements of the federal health care programs. The documentation described above shall be made available by EMS at all reasonable times for inspection, audit and reproduction. Furthermore, for purposes of this provision, OIG or its authorized representative(s) may, upon reasonable advance notice to EMS, interview any of EMS's employees who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. EMS agrees to assist OIG in contacting and arranging interviews with such employees upon OIG's request.

V. IMPLEMENTATION AND ANNUAL REPORTS

Implementation Report: Within one hundred fifty (150) days after the execution of this Agreement, EMS shall submit a written report to the OIG summarizing the status of implementation of the requirements of this Agreement. This implementation report shall include:

1. the name, address, phone number and position description of the Compliance Officer and Compliance Committee members required in III.A;
2. a certification that the written Integrity Policy required by III.C has been

developed, is being implemented, and that each affected employee has signed a certification attesting that he or she has received, read, understood and will abide by the Policy;

3. a description of the Information and Education Program implemented pursuant to III.D and a summary of the activities undertaken in furtherance of the Information and Education Program, including schedules and format of the training sessions;
4. a description of the Confidential Disclosure Program pursuant to III.E and a description of the other lines of communication between the Compliance Officer and employees;
5. the identity of the Annual Auditor and Independent Auditor and the proposed start and completion date of the first Annual Review and Audit; and
6. a summary of any personnel actions taken pursuant to section III.F.

Annual Reports: EMS shall make annual reports (each one of which is referred to in this Agreement as the “Annual Report”) to the Fire Commissioner and OIG describing the measures EMS has taken to implement the EMS Billing Compliance Program and ensure compliance with the terms of this Agreement. In accordance with the provisions above, the Annual Report shall include the following information:

1. In the first Annual Report, copies of the document or documents that comprise the EMS Billing Compliance Program established under this Agreement, as adopted by EMS and implemented by the Compliance Committee. For subsequent years, EMS shall note in the report any significant amendments or revisions to the Program documents made during the year covered by the Annual Report.
2. Copies of any revisions or significant amendments made to the billing policies, procedures and practices used or followed in the generation of claims or bills to the federal health care programs made during the year covered by the Annual Report pursuant to section III.B and Attachment 1 of this Agreement.
3. A detailed description of the findings made during the reviews and audits conducted pursuant to section III.B of this Agreement relating to the year covered by the Annual Report, copies of the disclosure or notice documents made by EMS pursuant to that section, and a description of the corrective steps and proof of refund to the pertinent payor (where applicable).
4. Any significant revisions or amendments made during the year covered by the Annual Report to the Integrity Policy developed pursuant to section III.C of this

Agreement.

5. A description of the Information and Education Program implemented pursuant to section III.D of this Agreement and a summary of the activities engaged in, in furtherance of this program, including a schedule, a topic outline of the training sessions and a list of the participants organized by department or division.
6. A summary of communications (including the number of disclosures by employees and their dates) received through the Confidential Disclosure Program established pursuant to section III.E concerning billing practices reported as, and found to be inappropriate; the results of all investigations and internal reviews; and any follow up on such disclosures.
7. A summary of the background inquiries conducted pursuant to section III.F above on which any personnel actions (other than hiring) were taken as a result of these inquiries, subject to any applicable confidentiality restrictions.
8. A statement about any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that EMS has committed a crime or has engaged in fraudulent activities, or any requests (whether voluntary or compulsory) for the production of documents, information or testimony made to EMS (or its officers or employees in connection with their relationship to EMS) by a federal or state agency, which relates to a federal health care program. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or request.
9. The names of EMS's officers and Compliance Committee members.
10. A written certification from the Fire Commissioner indicating that he has reviewed the Annual Report, and, upon information and belief, the information is accurate and truthful.

Where applicable, the Annual Report shall include a statement that, to the best of EMS's knowledge, no events subject to the reporting requirements identified above occurred, other than those described in the Annual Report. EMS agrees to maintain all information (including supporting documentation) relating to such reports on its premises and arranged by report year so that they will be readily available to OIG for a minimum of six (6) years or one (1) year longer than the duration of this Agreement.

The period covered by the first Annual Report shall commence on the date of execution of this Agreement and end on December 31, 1999. For subsequent years, the period shall

be from January 1 through December 31. Each Annual Report shall be submitted to OIG no later than February 28 following the end of the period covered by the Annual Report. The first Annual Report shall be due on February 28, 2000.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise agreed to by the parties in writing subsequent to the execution of this Agreement, all notifications and reports required under the terms of this Agreement shall be submitted to the entities listed below:

ATTENTION: Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Ph. 202.619.2078
Fax 202.205.0604

ATTENTION: Kay Ellis, New York Fire Department
9 Metrotech, Room 8S9
Brooklyn, New York 11201
Ph. 718.999.2033
Fax 718.999.2607

VII. DOCUMENT AND RECORD RETENTION

EMS shall maintain for inspection documents and records relating to reimbursement from the federal health care programs for a period of six (6) years following the execution of this Agreement or one (1) year longer than the duration of this Agreement.

VIII. COMPLIANCE WITH THIS AGREEMENT

EMS's compliance with the terms and conditions in this Agreement shall constitute an element of its present responsibility with regard to participation in the federal health care programs. Full and timely compliance by EMS shall be expected throughout the duration of this Agreement with respect to all of the obligations herein agreed to by EMS. As stated below in section IX of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect. The OIG will in good faith consider any requests for extension of time.

A. CONTRACTUAL DAMAGES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS

As a contractual remedy, EMS and OIG hereby agree that failure to comply with certain obligations set forth in this Agreement may lead to the imposition of specific contractual damages (hereinafter referred to as “contractual damages”) in accordance with the following provisions.

1. Contractual damages of \$1,000 for each day EMS fails to comply with any of the following, which contractual damages shall begin to accrue one (1) day after the date the obligation becomes due:
 - a. submission of the complete Annual Report, in accordance with the requirements in section V, by February 28 of the applicable year;
 - b. initial appointment of a Compliance Officer within sixty (60) days of the date of execution of this Agreement;
 - c. initial appointment of a Compliance Committee within sixty (60) days of the date of execution of this Agreement;
 - d. make available to all employees and patients a telephone line pursuant to the Confidential Disclosure Program within one hundred twenty (120) days of the execution of this Agreement.
2. Contractual damages of \$750 for each day EMS fails to have in place within the time frames set forth in this Agreement any of the following, which contractual damages shall begin to accrue five (5) business days after the date of OIG’s notice of noncompliance, which shall be sent by certified mail, return receipt requested, or on a later date, as otherwise indicated in OIG’s notice, in accordance with section VIII.B below.
 - a. the EMS Billing Compliance Program;
 - b. the Compliance Committee and the Compliance Officer;
 - c. the Education and Information Program;
 - d. the Confidential Disclosure Program; and
 - e. a mechanism for conducting compliance audits and reporting material deficiencies.

3. Contractual damages of \$750 for each day EMS fails to grant reasonable access to the information or documentation necessary to exercise OIG's inspection, audit and review rights set forth in section IV of this Agreement, which contractual damage shall begin to accrue on the date EMS fails to grant reasonable access.
4. Contractual damages of \$500 for each day EMS knowingly employs or contracts with an individual or entity to provide services relating to EMS's federal health care program operations (as specified in section III.F above) after that individual or entity has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare or any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), which contractual damage shall begin to accrue five (5) business days after the date of OIG's notice of noncompliance, which shall be sent by certified mail, return receipt requested, or on a later date, as otherwise indicated in OIG's notice, in accordance with section VIII.B.
5. Contractual damages of \$500 (which shall begin to accrue twenty-five (25) days after the date that the OIG provides notice by certified mail, return receipt requested) to EMS of the failure to comply, for each day EMS is in material breach of this Agreement. For good cause, the OIG may extend this twenty-five (25) day period upon timely written request by EMS to OIG prior to the expiration of the period.

B. PAYMENT OF CONTRACTUAL DAMAGES

Upon finding that EMS has failed to comply with any of the above-enumerated obligations, OIG may choose to demand payment of the contractual damages above. To effectuate the demand, OIG shall notify EMS by certified mail, return receipt requested, of: (i) EMS's failure to comply; and (ii) OIG's exercise of its contractual right to demand payment of the contractual damages payable under this Agreement (this notification is hereinafter referred to as the "Demand Letter").

Within ten (10) days of receipt of the Demand Letter, EMS shall respond by either: (i) curing the breach to OIG's satisfaction, paying the applicable contractual damages and notifying OIG of its corrective actions; or (ii) sending in writing to OIG a request for a hearing before an HHS administrative law judge to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth in section VIII.D of this Agreement. EMS's election of the contractual right herein to seek review of OIG's noncompliance determination shall not preclude EMS from also choosing to pay the applicable contractual damages at any time after receiving the Demand Letter, with the right to receive a refund in the event of a determination in favor of EMS. Failure to respond to the Demand Letter shall be considered a material breach of this Agreement

and shall be grounds for exclusion under section VIII.C below.

Payment of the contractual damages shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI of this Agreement.

C. REMEDIES FOR MATERIAL BREACH OF THIS AGREEMENT

If EMS engages in conduct that OIG considers to be a material breach of this Agreement, OIG may seek exclusion of EMS from participation in the Medicare and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon making its determination, OIG shall notify EMS of the alleged material breach by certified mail and of its intent to exclude as a result thereof (this letter shall be referred to hereinafter as the "Notice of Material Breach and Intent to Exclude"). EMS shall have thirty-five (35) days from the date of the letter to:

1. demonstrate to OIG's satisfaction that EMS is in full compliance with this Agreement;
2. cure the alleged material breach; or
3. demonstrate to OIG's satisfaction that the alleged material breach cannot be cured within the thirty-five (35) day period, but that EMS has begun to take action to cure the material breach and that it shall pursue such action with due diligence. EMS shall, at this time, submit a timetable for curing the material breach for OIG's approval.

If at the conclusion of the thirty-five-day period (or other specific period as subsequently agreed by OIG and EMS), EMS fails to act in accordance with provisions 1, 2 or 3 above, OIG will exclude EMS from participation in the Medicare and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). OIG shall notify EMS in writing of its determination to exclude EMS (this letter shall be referred to hereinafter as the "Exclusion Letter").

Notwithstanding any provisions in Chapter 42 of the Code of Federal Regulations, the exclusion shall take effect thirty (30) days from the date of the Exclusion Letter unless EMS exercises its contractual right to seek review of OIG's exclusion determination by requesting a hearing before an administrative law judge as provided in section VIII.D below. In the event EMS requests such a hearing, the exclusion shall not be effective until the issuance of an administrative law judge's decision supporting OIG's exclusion determination. The exclusion of EMS shall have national effect and will also apply to all other federal procurement and non-procurement programs.

For purposes of this section, a “material breach” shall mean: (i) a failure to report a material billing violation that has a significant, adverse financial impact, take corrective action and pay the appropriate refunds, as provided in section III.B of this Agreement; (ii) a pattern of violations of the obligations under this Agreement, including, but not limited to, the obligations addressed in section VIII.A of this Agreement; or (iii) failure to respond to a Demand Letter concerning the payment of contractual damages in accordance with section VIII.B above.

In connection with OIG’s determination to exclude EMS pursuant to this provision, EMS shall have the right to dispute OIG’s determination in accordance with the agreed upon provisions set forth in section VIII.D of this Agreement.

D. DISPUTE RESOLUTION

Upon OIG’s delivery to EMS of its Demand Letter or of its Exclusion Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligations in this Agreement, EMS shall be afforded review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the contractual damages or exclusion sought pursuant to this Agreement. Specifically, OIG’s determination to demand payment of contractual damages or to seek exclusion shall be subject to review by an HHS administrative law judge and the Departmental Appeals Board (“DAB”) in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving contractual damages shall be made within ten (10) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for contractual damages under this section shall be: (i) whether, on the date of the Demand Letter, EMS was in compliance with the obligations in this Agreement for which OIG demands payment; (ii) whether EMS failed to cure; (iii) whether the alleged noncompliance could have been cured within the ten-day period; and (iv) the period of noncompliance. For purposes of paying contractual damages under this Agreement, and if EMS chooses to seek review in lieu of curing the breach and paying the contractual damages, as set forth above, the administrative law judge’s decision, shall give rise to EMS’s obligation to pay. Thus, payment will be due twenty (20) days from the day the administrative law judge’s decision is mailed, notwithstanding that EMS may request review of the administrative law judge’s decision by the DAB.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a

material breach of this Agreement shall be: (i) whether EMS was in material breach of one or more of its obligations under this Agreement; (ii) whether the alleged material breach was continuing on the date of the Exclusion Letter; (iii) whether, as of the date of the Exclusion Letter, EMS had failed to cure; and (iv) whether the alleged material breach could have been cured within the thirty-five (35) day period or such other period as agreed to in writing between EMS and OIG. For purposes of the exclusion herein agreed to, in the event of a material breach of this Agreement, an administrative law judge's decision finding in favor of OIG shall be deemed to make the exclusion effective, at which time OIG may proceed with its exclusion of EMS.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, OIG shall have the burden of going forward and the burden of persuasion with respect to the issue of whether EMS was in compliance (for contractual damages) or in material breach (for exclusion) and with respect to the period of noncompliance or material breach. EMS shall bear the burden of going forward and the burden of persuasion with respect to the issue of whether, as of the date of the Demand Letter or the Exclusion Letter, EMS cured the alleged noncompliance or material breach, and with respect to the issue of whether the alleged noncompliance or material breach could have been cured during the specified period. The burden of persuasion will be judged by a preponderance of the evidence.

All notices required under any of the aforementioned proceedings shall be given to OIG and EMS in accordance with section VI of this Agreement.

Nothing herein shall be construed as a waiver by EMS or OIG of any right of review that EMS or OIG may have under applicable law.

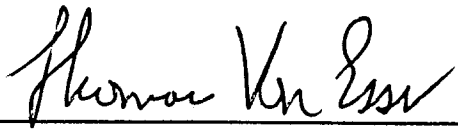
IX. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the settlement agreement pursuant to which this Agreement is entered, and into which this Agreement is incorporated, EMS and OIG agree as follows:

1. this Agreement shall be binding on the successors, assigns and transferees of EMS;
2. this Agreement shall become final and binding only upon signing by each respective party hereto;
3. any modifications to this Agreement shall be made with the prior written consent of the parties to this Agreement; and

4. the undersigned EMS signatories represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

ON BEHALF OF THE NEW YORK CITY FIRE DEPARTMENT EMERGENCY MEDICAL SERVICE



THOMAS VON ESSEN
New York Fire Department Commissioner

10/13/98
DATE

APPROVED AS TO FORM:



MICHAEL D. HESS
Corporation Counsel for the City of
New York

Oct. 13, 1998
DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



LEWIS MORRIS, ESQUIRE

Assistant Inspector General for Legal Affairs

Office of Counsel to the Inspector General

Office of Inspector General

U. S. Department of Health and Human Services

10/14/98
DATE

U.S. ATTORNEYS OFFICE

NOV 1998